



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 5  
77 WEST JACKSON BOULEVARD  
CHICAGO, IL 60604-3590

**MAR 31 2014**

REPLY TO THE ATTENTION OF:

WC-15J

**CERTIFIED MAIL 7001 1680 0000 7675 1902**  
**RETURN RECEIPT REQUESTED**

The Honorable Larry Mulligan Jr.  
Mayor City of Middletown  
One Donham Plaza  
Middletown, Ohio 45042

Subject: Requests for Information Pursuant to Section 308 of the  
Clean Water Act (33 U.S.C. § 1318) Docket No.: V-W-14-308-16

Dear Mayor Mulligan:

Under the authority provided by Section 308 of the Clean Water Act (CWA), 33 U.S.C. § 1318(a), the U.S. Environmental Protection Agency is requiring that the City of Middletown perform the combined sewer overflow and receiving stream sampling described in the enclosed document, beginning June 1, 2014. Please note that the obligation to perform the sampling will continue until October 15, 2014, unless EPA informs Middletown that the sampling can cease at an earlier date.

Please submit the information requested in the accompanying documents with a statement certifying that all representations contained therein are true and accurate to the best of your knowledge and belief using the certification language provided. Please exercise care to assure that responses are complete and accurate, because Section 309(c)(2) of the Act, 33 U.S.C. § 1319(c)(2), provides for the imposition of criminal penalties where false information is knowingly provided to EPA.

Thank you for your cooperation in this matter. If you have any questions concerning this matter, please contact Jonathan Moody of my staff at (312) 353-4621. Please send your written responses to the address specified in the enclosed documents.

Sincerely,



Tinka G. Hyde  
Director, Water Division

Enclosures

cc: Vincent Atriano, Squire, Sanders & Dempsey L.L.P.  
Robert Darnell, DOJ  
Paul Novak, Ohio EPA

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 5**

<b>IN THE MATTER OF:</b>	)	<b>REQUEST PURSUANT TO SECTION</b>
	)	<b>308(a) OF THE CLEAN WATER ACT</b>
<b>THE CITY OF MIDDLETOWN, OHIO</b>	)	<b>33 U.S.C. SECTION 1318 (a)</b>
<b>NPDES No. OH0026522</b>	)	
	)	<b>DOCKET NO. V-W-14-308-16</b>

Pursuant to the authority vested in the Administrator of the U.S. Environmental Protection Agency by Section 308 (a) of the Clean Water Act (CWA), 33 U.S.C. § 1318 (a), and duly re-delegated to the undersigned Director of the EPA Region 5 Water Division, EPA is requiring that the City of Middletown sample its discharges relating to combined sewer overflows (CSOs) and in-stream monitoring points, prepare reports, and provide information in accordance with this request. EPA is requiring Middletown to perform this sampling for the purpose of determining whether Middletown is in violation of the General Effluent Limitations in Part III.2 of Middletown's NPDES permit.

Access to records and information described herein must be provided notwithstanding the possibility that the records contain information that may be characterized as confidential information or trade secrets. Should you so request, however, any information (other than public information) which the Administrator of this Agency determines to constitute methods, processes, or other business information entitled to protection as trade secrets will be maintained as confidential or trade secret. Request for confidential treatment must be made when information or access to records is provided, since any information not so identified will not be accorded this protection by the Agency.

EPA has the authority to use the information generated in response to this request in an administrative, civil or criminal action. There are significant civil and criminal penalties pursuant to Section 309 of the CWA, 33 U.S.C. § 1319 for violations of Section 308.

This request is being sent to Middletown via certified mail. It shall become effective seven calendar days after the date Middletown receives the request, as shown on the certified mail receipt (effective date). We encourage Middletown to contact Jonathan Moody of my staff at (312) 353-4621, or Gary Prichard in the Office of Regional Counsel at (312) 886-0570, if you have any questions about this request.

## I. INSTRUCTIONS AND DEFINITIONS

The term "Middletown" shall mean the City of Middletown and any agents, employees or contractors or other entities that performed work or acted in any way on behalf of or at the direction of the City of Middletown.

The term "combined sewer overflow" or "CSO" refers to discharges (as defined by Section 502(12) of the Clean Water Act) from any of the "overflow" locations identified in Part II, E. of Middletown's NPDES Permit for its CSOs.

The term "combined sewer overflow outfall" or "CSO outfall" refers to the specific point source at a particular location from which a CSO occurs.

The term "NPDES Permit" refers to the National Pollutant Discharge Elimination System Permit No. OH0026522, issued by the Ohio EPA to the City of Middletown with an effective date of August 1, 2009, and an expiration date of January 31, 2014.

## II. REQUESTS

### I. CSO Sampling and Reporting Requirements for the City of Middletown

#### General Matters

1. Among other things, this Information Request requires that the City of Middletown sample its CSOs at its CSO discharge points to the Great Miami River and the Hydraulic Canal during overflow events. An "overflow event" is defined as a day in which the specific CSO discharge point overflows continuously for one or more hours, and would include a subsequent day, if the overflow is continuous.
2. All grab samples taken pursuant to this Request shall be handled and analyzed in accordance with 40 C.F.R. Part 136. The following parameters will be analyzed for all samples:
  - (a) *Escherichia coli* (*E. coli*)
  - (b) Total Kjeldahl Nitrogen
  - (c) Nitrate-Nitrite
  - (d) Total Organic Carbon
  - (e) Ortho-phosphate
  - (f) Phosphorus, Total
  - (g) BOD, 5 day
  - (h) Total Suspended Solids

### CSO Samples

3. Beginning on June 1, 2014, and continuing until October 15, 2014, Middletown shall collect grab samples of CSOs from each of the CSO outfalls identified in Part II, D. of Middletown's NPDES Permit, in the following manner:
  - a) Frequency of Sampling: Middletown shall conduct sampling at each CSO outfall at least once every four times that the specific CSO discharges. In other words, Middletown shall sample one of every four discharge events from each specific CSO outfall. After the first four discharge events, Middletown shall implement another round of the CSO sampling, so that each CSO outfall identified in the NPDES permit is sampled at least a second time during the next four discharge events. Middletown shall continue to sample in this manner until October 15, 2014, or earlier if EPA notifies Middletown in writing that Middletown can cease sampling the CSOs identified in the NPDES permit, before October 15, 2014.
  - b) Number of Samples Obtained: At each CSO outfall sampled, Middletown shall obtain at least one grab sample of the effluent discharged during the first 30 minutes of the CSO discharge.
  - c) Location of Sampling: The CSOs shall be sampled at the CSO outfall locations or a manhole on the CSO piping system, such that the samples taken are representative of discharges from the CSO outfall into the waterbody.
  - d) Parameters Analyzed: The samples shall be analyzed for the parameters listed in Paragraph 2 of this Information Request.

### Whole Effluent Toxicity (WET) Testing

4. Beginning on June 1, 2014, and continuing until October 15, 2014, Middletown shall collect one sample for a Whole Effluent Toxicity (WET) test from each of the CSO outfalls identified in Part II, D. of Middletown's NPDES Permit, in the following manner:
  - a) The WET test shall be an Acute Toxicity Test. All WET testing shall be done in accordance with the "Reporting and Testing Guidance for Biomonitoring Required by the Ohio Environmental Protection Agency, Revision 1" dated July 1998 (Ohio EPA Biomonitoring Guidance).
  - b) The Permittee shall conduct quarterly definitive acute toxicity tests using *Ceriodaphnia dubia* and *Pimephales promelas* on effluent samples from each outfall. These tests shall be conducted as specified in Section 2 of the Ohio EPA Biomonitoring Guidance.

- c) Frequency of Sampling: Middletown shall conduct sampling at each CSO outfall at least once every calendar month. Middletown shall continue to sample in this manner until October 15, 2014, or earlier if EPA notifies Middletown in writing that Middletown can cease sampling the CSOs identified in the NPDES permit, before October 15, 2014.
- d) Number of Samples Obtained: At each CSO outfall sampled, Middletown shall obtain at least one grab sample of the effluent discharged during the first 30 minutes of the CSO discharge.
- e) Location of Sampling: The CSOs shall be sampled at the CSO outfall locations or a manhole on the CSO piping system, such that the samples taken are representative of discharges from the CSO outfall into the waterbody.

#### In-stream Samples

- 5. Beginning on June 1, 2014, and continuing until October 15, 2014, Middletown shall carry out In-Stream Monitoring at set locations following a fixed schedule for the Monitoring Period (Fixed Day Monitoring). Fixed Day Monitoring shall take place on five or more predetermined evenly-spaced days per month at the locations listed below:
  - (a) A location representative of the water quality immediately upstream of each specific CSO outfall that is being sampled and
  - (b) A location representative of water quality immediately downstream of each specific CSO outfall (but upstream of any subsequent CSO outfalls) that is being sampled.
- 6. Fixed Day Monitoring is to consist of single grab samples and in situ field measurements taken at each location. The grab samples are to be analyzed for all parameters listed in Paragraph 2. In situ field measurements will be taken for the following parameters: Dissolved Oxygen, temperature, and conductivity.
- 7. Wet Weather samples shall be collected concurrent with the CSO sampling described above, Middletown shall collect one sample at each location within one hour after the time that the specific CSO outfall is being sampled and at a time when effluent discharged from the specific CSO outfall being sampled would be expected to have reached the downstream sample location.

#### Methodology and Reports

- 8. Middletown shall prepare and provide to EPA a written report of the results of all sampling and analysis required under this request within 30 days after the date that the sampling occurred. The reports shall specify each outfall that was sampled and the locations within the receiving stream where each sample was collected, the date of



each sample and the most probable number of *E. coli* per 100 milliliters determined to be present in each sample.

9. Middletown shall submit the reports described in Paragraph 8 until November 15, 2014, or sooner if EPA informs Middletown in writing that such reports are no longer required.

### III. NOTIFICATION OF INTENT TO COMPLY

10. Within three calendar days of the effective date of this request, please notify EPA, in writing, as to whether Middletown intends to comply with this request. If Middletown does not intend to comply with any aspect of this request, please explain in writing the specific aspect of this request that Middletown does not intend to comply with and the reason Middletown does not intend to comply.

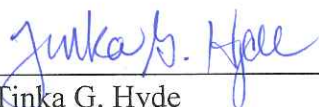
### IV. REPORTS AND CERTIFICATION

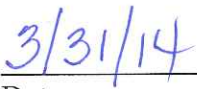
11. Middletown shall submit the reports required by this Information Request to EPA at the address set forth below:

Director, Water Division  
United States Environmental Protection Agency – Region 5  
77 W. Jackson Blvd.  
Chicago, Illinois 60604  
ATTN: Jonathan Moody, WECA Branch (WC-15J)  
Facsimile Number (312) 697-2091

This information request is not subject to the Paperwork Reduction Act.

Please contact Jonathan Moody of my staff at (312) 353-4621, or Gary Prichard in the Office of Regional Counsel at (312) 886-0570, if you have any question about this request.

  
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Tinka G. Hyde  
Director, Water Division  
US EPA  
Region 5

  
\_\_\_\_\_  
Date